IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-20-00535

DIRECTOR OF PUBLIC PROSECUTIONS

v

RICK MCLEOD

JUDGE:	His Honour Judge Rozen
WHERE HELD:	Melbourne
DATE OF HEARING:	23 May & 17 November 2023
DATE OF SENTENCE:	1 December 2023
CASE MAY BE CITED AS:	DPP v MCLEOD
MEDIUM NEUTRAL CITATION:	[2023] VCC 2213

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Obtain financial advantage by deception – Obtain property by deception – Protracted procedural history – Guilty plea – Change of plea application – Protracted offending – Multiple, vulnerable victims – Pseudo-white collar offender – Dishonestly obtained to finance personal expenses – Current sentencing practices – Lengthy and relevant criminal history – High moral culpability
Legislation Cited:	*Crimes Act 1958* (Vic); *Sentencing Act 1991* (Vic)
Cases Cited:	*DPP v McLeod (Ruling)* [2023] VCC 1880; *DPP v Bulfin* [1998] 4 VR 114; *DPP v Conos* [2021] VSCA 367; *R v Verdins* [2007] VSCA 102; *Charters v The Queen* [2012] VSCA 318; *Hicks v The Queen* [2016] VSCA 162; *Weatherburn v The King* [2023] VSCA 283; *Worboyes v The Queen* [2021] VSCA 169
Sentence:	3 years and 10 months' imprisonment – Non-parole period of 2 years and 3 months – s 6AAA declaration – 4 years and 10 months' imprisonment with a non-parole period of 3 years and 2 months – Compensation order

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APPEARANCES:	Counsel	Solicitors
For the DPP	Mr P. Pickering	Office of Public Prosecutions
For the Accused	Mr A. Dickenson	Giorgianni & Liang Lawyers

HIS HONOUR:

1 Rick McLeod, you have pleaded guilty to the following offences:

(a) Two charges of obtain financial advantage by deception, contrary to s 82(1) of the *Crimes Act 1958* (Vic), each of which is rolled-up and each of which carries a maximum penalty of 10 years' imprisonment; and

(b) Two charges of obtain property by deception, contrary to s 81(1) of the *Crimes Act 1958* (Vic), one of which is rolled-up, and each of which carries a maximum penalty of 10 years' imprisonment.

2 **Procedural History**

3 Before summarising the circumstances of your offending, the unusually protracted nature of your case warrants chronicling. It is necessary to explain the lengthy delay in its finalisation and especially the delay between your arraignment in March 2022 and the date of sentencing in December 2023. In so doing, I am repeating much of the chronology outlined in an earlier ruling[1] in your case but that is unavoidable.

4 Your offending occurred between July 2017 and June 2019. Your matter was committed to the County Court by way of straight hand-up brief on 6 April 2020, at which point you entered a plea of not guilty.

5 You were initially represented in this Court by Mr Tas Roubos, of Roubos & Associates. The first three listings of your matter in this Court were adjourned due to COVID-19.

6 At the final directions hearing on 9 November 2020, a trial was listed for 1 February 2022. Following four adjourned funding mentions between 10 November and 15 December 2021, a further final directions hearing was listed

[1] See *DPP v McLeod (Ruling)* [2023] VCC 1880.

for 17 January 2022 at which new solicitors, Stary Norton Halphen, appeared for you seeking an adjournment to prepare.

7 Then, at the adjourned final directions hearing on 21 January 2022, an adjournment was granted to allow new counsel to appear for you. On 25 January 2022, the Court was informed that funds were not in place for your representation.

8 On 28 January 2022, an application was made to adjourn the trial, which was refused. The trial was, however, adjourned on 31 January 2022 for want of a judge. Ultimately, the trial was vacated on 15 February 2022.

9 Your matter ostensibly resolved on 21 March 2022 when you were arraigned before his Honour Judge Mullaly, pleading guilty to all charges. A plea date was set for 2 August 2022.

10 On 29 July 2022 the plea listing was vacated and then adjourned on 2 August 2022, to allow you time to obtain psychological material.

11 On 15 November 2022, Stary Norton Halphen, ceased to act for you.

12 On 21 November 2022, my chambers received an email from Mr Roubos, your former solicitor, confirming that his office had received instructions to act for you in respect of a change of plea application. Mr Roubos sought an adjournment on your behalf. I refused to adjourn the matter administratively.

13 Your matter was listed for plea on 22 November 2022. After hearing from your new solicitor, I adjourned the matter to 16 December 2022 for mention to allow time for counsel to be briefed on the change of plea application.

14 At the mention, the Court was informed that there had been no progress in respect of briefing counsel and further, that there were issues with your capacity to fund your representation. I again adjourned the matter to 9 February 2023 for mention.

15 On 9 February 2023, I made orders timetabling the filing of material in support of the change of plea application and adjourning the matter for hearing of the application to 6 March 2023.

16 In the interim, you again had a change of representation. My chambers were emailed by Mr Raj Malhotra, of MK Law, confirming that he had been instructed by you. Mr Malhotra also informed the Court that you wished to abandon your change of plea application and that, with respect to the further progress of the matter, you were to be assessed by Ferrari Consulting with the view to obtaining a psychological report for sentencing.

17 On 6 March 2023, your change of plea was formally abandoned before the court and the matter was adjourned for plea on 23 May 2023.

18 On 20 April 2023, MK Law ceased to act for you.

19 On 1 May 2023, my chambers was emailed by Ms Nadia Giorgianni, of Giorgianni & Liang Lawyers, advising that she had been instructed to act on your behalf and that you wished to make a change of plea application. Ms Giorgianni further advised that she would be unable to assist you unless an adjournment was granted by the Court.

20 On 23 May 2023, Ms Giorgianni sought an adjournment to allow a psychological assessment to be undertaken and a report prepared. Mr Pickering, for the prosecution, was understandably unwilling to accede to this application, and it was on that basis that the plea commenced in earnest, with the Opening read to the Court and Victim Impact Statements read and tendered.

21 On 21 June 2023, Ms Kaddeche of counsel appeared on behalf of you instructed by Giorgianni & Liang solicitors. Ms Kaddeche explained she had only just been briefed in the matter and sought a brief adjournment to familiarise herself with the case and obtain instructions. The matter was further adjourned to 26 June 2023.

22 On 26 June 2023, Ms Kaddeche informed the court that Mr McLeod wanted to seek the court's leave to change his pleas to 'not guilty'. The court made procedural orders for the filing of evidence and submissions and listed the application for hearing on 25 August 2023.

23 On 19 October 2023, I refused your application for change of plea and listed the matter for plea on 17 November 2023.[2]

24 On 25 October 2023, Giorgianni & Liang solicitors filed a notice of ceasing to act. My chambers was then contacted on 27 October 2023 by Mr Ian Crisp, of counsel, who advised he had been instructed to act for you.

25 On 15 November 2023, an email was sent to my chambers by Ms Giorgianni who advised she had again been instructed by you and that she had briefed Mr Andrew Dickenson, of counsel, who appeared on your behalf at the plea on 17 November 2023.

26 At the conclusion of that hearing, I remanded you in custody for sentencing on 1 December 2023.

27 **The Offending**

28 You are to be sentenced on the basis of the Summary of Prosecution Opening dated 23 October 2022, which I note is an agreed document.[3]

29 Between 5 July 2017 and 6 June 2019 you embarked on a course of offending against four victims that can be summarised as follows.

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[2] *DPP v McLeod (Ruling)* [2023] VCC 1880.
[3] Exhibit P1.

33 *Jemma Twill*[4] *– Charge 1*

34 In July 2017, you met Jemma Twill through a dating website called Oasis. You adopted the name 'Chris McLeod' on the platform and began communicating with her by voice and text message.

35 You told Ms Twill that you were an investor or financial advisor, and claimed to work with "high profile people". You then told her that you had an investment opportunity that would provide her a return on her money whilst helping others to reduce tax.

36 You encouraged her to obtain cash advances from her credit card to fund the investment if she did not have sufficient cash reserves on hand.

37 At your instigation, she made six transfers to your bank account between 5 and 14 July 2017 totalling $20,500, most of which came from cash advances from her credit cards.

38 You then asked her for more money. Despite her initial reluctance, you succeeded in convincing her to further extend her credit card, after which she made two further transfers totalling $11,500 to your bank account.

39 After repeated requests by Ms Twill for confirmation that the money had been invested, and also enquiring as to delivery of the promised returns, you promised to furnish her with the paperwork for the agreement.

40 On 26 August 2017, you sent two text messages to Ms Twill setting out the agreement, which referred to you as being from "Stil Brokers":

> 41 $2000 invested at an interest rate of $250 per week paid to a designated account commencing on 1 September 2017 and to be reassessed at the end of September 2017;

[4] A pseudonym.

42 $30,000 investment to be repaid by the end of November 2017, with interest of $5500

43 You only made a few repayments totalling $2,750 between 20 November 2017 and 31 May 2019. You also provided a cheque for $1,000 in October 2017, which was dishonoured.

44 You had numerous text message exchanges with Ms Twill regarding the failure to repay the money.

45 *Mandy Jacobs*[5] *– Charge 2*

46 You met Mandy Jacobs, through the Oasis online dating site in July 2017.

47 You claimed in your first meeting that you were a "CPA" (Chartered Practising Accountant) and that you were involved with "high end barristers and lawyers", giving her a business card from "Stil Brokers".

48 The business card listed your mobile phone number and another number for "Chris". It stated, 'Super Tax Investment Legal'.

49 After going out a few times over four weeks, you telephoned Ms Jacobs and offered her a "deal", although you said you would have to confirm with a lawyer whether she could invest in this deal.

50 You telephoned her back shortly after and told her that she could invest $50,000 and you provided her with your bank account details.

51 The agreement for the purported investment of money was confirmed by email and provided that you would pay $1,500 per month on an investment of $50,000, and the $50,000 would be repaid in three months. Ms Jacobs also confirmed by email that she would transfer a further $20,000 to you from cash advances on her credit cards.

[5] A pseudonym.

52 On 17 July 2017, Ms Jacobs transferred $50,000 to your bank account. On 19 July 2017, Ms Jacobs transferred a further $20,000 to your bank account.

53 You did not invest any of this money.

54 On 4 August 2017, Ms Jacobs transferred a further $10,000 to you at your request. The agreement for this investment was that it was a two week loan and she would receive $1,150 from you as interest.

55 You did not repay the principal $10,000, nor the interest.

56 On 9 August 2017, you provided Ms Jacobs with a statutory declaration stating that you had received $56,000 from her and that you would repay the money by November 2017.

57 You repaid approximately $2,000 in small increments.

58 *Vanessa Rosemont*[6] *– Charge 3*

59 In September 2018, you met Vanessa Rosemont at the Sands Tavern in Carrum Downs. You gave her a business card of "Stil Brokers" with your mobile phone number on it.

60 You said that you were a lawyer and that you were setting up a brothel called "Mischiefs". You offered to employ Ms Rosemont as a receptionist.

61 You later visited Ms Rosemont at her home and said that as a lawyer you could get her a discount on her car loan if she gave the money to you.

62 Between 17 and 23 October 2018, Ms Rosemont made three withdrawals from her bank account, totalling $15,200, each time paying the amount to you.

63 You did not use the money received to pay Ms Rosemont's car loan.

[6] A pseudonym.

64 You made repayments of $150 on 22 October 2018 and $5,000 on 16 November 2018 but otherwise failed to repay the money to Ms Rosemont. You also gave her two cheques in the sum of $2,500 each, both of which were dishonoured on 12 November 2018.

65 *Robyn Mean*[7] *– Charge 4*

66 In May 2019, you met Robyn Mean on the Oasis online dating website. You gave her your mobile phone number at which point she realised that you were a former sex work client of hers from 2012.

67 After being involved in an intimate relationship with Ms Mean for some time, you began to talk about the possibility of marriage.

68 It was after this that you started to talk about Ms Mean's financial situation, and she admitted that she was both debt free and had savings and superannuation.

69 On 30 May 2019, you sent her a text message stating:

> 70 Robyn I have my own business in a CPA AIN [sic] LEGAL TAX SUPER INVESTMENT REAL ESTATE I ALSO APPEAR IN COURT As I GET TO KNOW YOU I HAVE OTHER BUSINESSES I LL [sic] TELL YOU…

71 On 1 June 2019, you sent her a text message saying that you wanted a "soulmate" and "partner in crime" for investments, and that:

(a) [You] worked with two barristers;

(b) It was a sound investment; and

(c) [You] would go to Dandenong Magistrates' Court to get the documents stamped and verified.

72 You convinced her that she could trust you to invest her money and that she would receive a return on the investment.

[7] A pseudonym.

73 In reliance on your assurances, Ms Mean made four transfers and deposits to your bank account between 3 and 6 June 2019 totalling $55,000.

74 After the first payment on 3 June 2019, you sent a text message to Ms Mean detailing the purported agreement:

75 Confirming the investment of the $30,000 with Stil Brokers;

76 Interest was to commence on 30 June 2019 and every month at the rate of $800 per month;

77 The term of the agreement ended on 30 November 2019;

78 The principal sum of $30,000 would be repaid on 30 November 2019

79 The purported agreement was said to be from “Rick McLeod Stil Brokers”.

80 Despite repeated requests for repayment by Ms Mean, and requests by you to Ms Mean for further “investments”, you failed to repay the principal or interest on the money invested.

81 *Investigation and Interviews*

82 Following a police report from Ms Mean, you were interviewed on 7 August 2019, during which you made the following admissions:

(a) You had received $55,000 from Ms Mean;

(b) You had a business called Stil Brokers;

(c) You had utilised the money from Ms Mean to repay your own debts

83 You were re-interviewed on 19 December 2019 and made further admissions:

(a) You received monies from Ms Jacobs and said you had a brokerage;

(b) You denied telling Ms Jacobs that you were a CPA;

(c) You had not repaid Ms Jacobs;

(d) The card you gave Ms Jacobs says “Stil Brokers” and “Super, tax, legal and investment. Experts looking after your future”;

(e) You had received monies from Ms Rosemont;

(f) You denied saying you were a lawyer;

(g) You claimed you had repaid Ms Rosemont.

(h) **Objective Gravity**

84 The offences you have committed are, as is clear from the prescribed maximum penalty of 10 years’ imprisonment, serious criminal offences. The gravity of your offending is accurately described by the following passage from the Court of Appeal in the well known case of *DPP v Bulfin*:

> (a) Whatever the motivation, offences of the kind here in question almost invariably involve a carefully calculated course of conduct over a long period, repeated deliberate acts of dishonesty, substantial amounts of money and frequently losses (often tragic in their impact) to large numbers of small investors. The offender often holds a position making it possible, or has the ability, to disguise or camouflage the conduct in question. Detection is difficult, the investigation of the crime usually lengthy and very expensive, and the problems of trial and proof will frequently be extreme. ... The result of such considerations, in my view, is that the element of general deterrence will usually carry particular significance in sentencing for crimes such as the present, both in relation to the total effective sentence and the non-parole period, together with the requirement for strong denunciation by the sentencing court[8]

85 As your counsel submitted, it is necessary to assess the objective gravity of each of the individual offences.

[8] [1998] 4 VR 114, 132 (‘***Bulfin***’).

86 Starting with charge 1 involving Ms Twill, the aspects of your offending that are relevant to an assessment of its objective gravity and your moral culpability are:

(a) The amount of money that you dishonestly obtained being $32,000;

(b) The eight separate amounts of money that Ms Twill transferred to your account at your request;

(c) The duration of your offending – 5 July 2017 – 17 August 2017; and

(d) The amount you have repaid – $2,750.

87 Turning to charge 2 involving Ms Jacobs, the aspects of your offending that are relevant to an assessment of its objective gravity and your moral culpability are:

(a) The amount of money that you dishonestly obtained being $80,000;

(b) The three separate amounts of money that Ms Jacobs transferred to your account at your request;

(c) The duration of your offending – 17 July 2017 – 4 August 2017;

(d) The amount you have repaid – $2,000; and

(e) That you have consented to the court making a compensation order against you in favour of Ms Jacobs for the remaining $78,000.

88 Turning to charge 3 involving Ms Rosemont, the aspects of your offending that are relevant to an assessment of its objective gravity and your moral culpability are:

(a) The amount of money that you dishonestly obtained being $15,200;

(b) The four separate amounts of money that Ms Rosemont transferred to your account at your request;

(c) The duration of your offending – 17-23 October 2018; and

(d) The amount you have repaid – $5,150.

89 Finally, in relation to charge 4 involving Ms Mean, the aspects of your offending that are relevant to an assessment of its objective gravity and your moral culpability are:

(a) The amount of money that you dishonestly obtained being $55,000;

(b) The four separate amounts of money that Ms Mean transferred to your account at your request;

(c) The duration of your offending – 3-6 June 2019; and

(d) The amount you have repaid – $0 (despite requests).

90 While you were not in a position of trust as an employee such as is commonly seen in white collar fraud cases, it is relevant that you callously took advantage of the emotional attraction that the four women apparently had towards you. They clearly believed that you were able to provide them with financial advice.

91 It is also relevant to my assessment of the objective gravity of your offending to take into account that the $182,200 you dishonestly obtained from these four women was used by you for your own needs. You told Mr Cummins that you used the money to pay for the expenses of daily living and to pay for your dependency on alcohol and gambling.

92 It is also necessary to take into account that three of the charges are 'rolled up' charges. Such a charge alleges that the accused has committed a number of discrete offences between specific dates and compresses them into a single charge. This requires the agreement of the defence. For the purposes of sentencing, it is a single offence with the relevant single penalty. In sentencing such an offender, the court will impose a penalty that reflects the overall criminality disclosed.

93 In *DPP v Conos*,[9] the Court of Appeal said of such a charge:

> (a) It is clear from this Court's authorities that a significantly higher sentence is justified on a rolled-up charge than would be the case for a single offence[10]

94 On balance, I consider that yours are mid-range examples of this type of offending. Your moral culpability for your offending is high.

95 **Victim Impact**

96 The Court has received in evidence four Victim Impact Statements. It is clear from all four statements that your actions have had a devastating and enduring impact upon the victims of your offending.

97 Ms Jacobs writes that 'Chris McLeod has impacted my life emotionally, socially & financially by taking away many choices'.[11] She says that she can no longer trust those closest to her and states that you have stripped her of her financial security.

98 According to her Victim Impact Statement,[12] your offending has caused Ms Mean to feel embarrassed and ashamed. She states that you have changed her 'life forever emotionally, psychologically and financially'. She states that she has had to withdraw money from her superannuation and take out a mortgage on her home. She states that your offending has also negatively impacted her relationship with her parents.

99 Finally, I have also read and had regard to the Victim Impact Statements of Jemma Twill[13] and Vanessa Rosemont,[14] whose statements were not read aloud at the plea hearing. They each eloquently describe the enduring adverse impact on them of your offending.

[9] [2021] VSCA 367.
[10] Ibid, [75] (emphasis added).
[11] Exhibit P3.
[12] Exhibit P4.
[13] Exhibit P2.
[14] Exhibit P5.

100 I take into account the impact of your offending on the victims.[15]

101 **Personal Circumstances**

102 You were born in Sri Lanka in 1948 and are now 75 years of age. You arrived in Australia with your mother and two siblings in 1956 with your father coming to Australia some years later. You have lived in Melbourne since 1956 apart from a period of travelling around Australia with your band. You have lived with Ms Jane Butterfield since about 2005. She remains supportive of you.

103 You had an unremarkable childhood with a supportive family. You achieved your leaving certificate at the age of 17 and started working at the Taxation Office. After a period working in insurance, you started a career as an entertainer. You toured Australia with a band and this brought you into contact with drugs and you started to live beyond your means. You also started gambling.

104 Between the ages of 27 and 34 you were married and you have a daughter from this marriage who is now 38. You have occasional contact with your daughter.

105 You have admitted a relevant and lengthy criminal history. You have been convicted of more than 400 counts of dishonesty offences for offending dating back to 1982, and this is the fifth time you have been sentenced in the County Court.

106 You have spent time in prison and on community correction orders for offending of this kind.

107 These prior sentences have plainly failed to deter you from engaging in the conduct for which you are to be sentenced today. I assess your rehabilitation prospects as poor.

108 **Submissions**

109 *Prosecution*

[15] *Sentencing Act 1991* (Vic), s 5(2)(daa).

110 Mr Pickering, on behalf of the prosecution, submitted that in light of the seriousness of your offending and your prior criminal history, only a term of imprisonment consisting of a head sentence and a non-parole period is adequate.

111 *Defence*

112 Mr Dickenson, referred the court to:

(a) A report of Mr Jeffrey Cummins dated 19 June 2023;[16] and

(b) A Patient Health Summary (Cedric McLeod) dated 14 June 2023.[17]

113 Mr Cummins, who is a forensic psychologist, expresses the opinion that you suffer from 'Gambling Disorder', 'Alcohol Use Disorder', 'Major Depressive Disorder of at least moderate severity' and 'Borderline Personality Disorder'. Mr Cummins adds that 'there has probably been a nexus between him suffering from the abovementioned mental health conditions and his offending behaviour'.[18]

114 Your counsel submitted, in reliance on this passage, that limbs 2 and 4 of the so-called *Verdins*[19] principles are enlivened in your case. The case of *Verdins* is authority for the proposition that, in certain cases, where an accused suffers from a mental condition, that can impact on the sentence to be imposed in a number of ways. Of the six ways in which mental health can be relevant to sentencing, the two relied upon by your counsel are:

(a) Limb 2 which states that the condition may have a bearing on the kind of sentence to be imposed; and

[16] Exhibit D1
[17] Exhibit D2.
[18] Exhibit D1, [38].
[19] *R v Verdins* [2007] VSCA 102 ('*Verdins*').

(b) Limb 4 which states that specific deterrence should be moderated or eliminated as a sentencing consideration depending on the effect of the condition on the mental capacity of the offender.[20]

115 Your counsel relied to some extent on limb 2 in support of his submission that a community correction order should be imposed. In particular, he referred to the opinion of Mr Cummins that 'it is very probable his mental health issues will be reinforced and exacerbated the longer the time he spends in custody'.[21] This opinion is also relevant to limb 6 of *Verdins* which states that 'where there is a serious risk of imprisonment having a significant adverse effect on the offender's mental health, this will be a factor tending to mitigate punishment'.[22]

116 The other medical summary tendered on your behalf records that you suffer from a range of conditions including hypertension, gout and insomnia. You are prescribed a range of medication for these conditions. It was not submitted that you suffered from any particular life-threatening health condition.

117 Ultimately, Mr Dickenson submitted on your behalf both in writing[23] and orally that a combination sentence of a term of imprisonment not exceeding 12 months and community correction order was an adequate sentence. Mr Dickenson referred to your plea of guilty, your mental health, age and physical health.

118

119 **Current Sentencing Practices**

120 Sentences imposed for the crime of obtaining financial advantage by deception vary widely reflecting the wide range of circumstances in which such offending occurs.

[20] *Verdins* (n 15), [32].
[21] Exhibit D1, [41].
[22] *Verdins* (n 15), [32].
[23] Defence Brief Outline of Submissions (undated).

121 The court was not referred to any comparable cases by the parties. The following cases were identified by the Court as somewhat similar to yours.

122 In the case of *Charters v The Queen*,[24] the offender was found guilty after a trial of five counts of obtaining property by deception. The offender had married his victim in a sham wedding and defrauded her of approximately $148,000 on five separate occasions. Having regard to the offender's 51 prior findings of guilt over a span of nearly 20 years for dishonesty and deception offences, the trial judge imposed sentences of 4 years and 6 months' imprisonment on each charge, with full concurrency, and set a non-parole period of 3 years and 6 months. On appeal, this was upheld and described as being 'on the lenient side'.[25]

123 In a more recent case, *Hicks v The Queen*,[26] the Court of Appeal considered the sentence imposed after a jury convicted the appellant of five charges of obtaining a financial advantage by deception. The offending involved the appellant soliciting three separate victims to invest a total of $595,000 in a false investment scheme. The Court of Appeal had regard to delay, the appellant's age of 71 and ill-health, and his lack of criminal history and reasonable prospects of rehabilitation. He was resentenced to a total effective sentence of four years and six months with a non-parole period of two years and six months.

124 Such cases are not precedents. They offer only limited assistance especially as they both involved sentencing after contested hearings. Ultimately the court's task is to determine an appropriate sentence in your case taking into account your offending and the other matters outlined in these reasons.

125 **Delay**

126 As observed earlier in these reasons, your matter has had an unusually protracted journey through the criminal justice system for several reasons.

[24] [2012] VSCA 318.
[25] Ibid, [50].
[26] [2016] VSCA 162 ('***Hicks***').

127 In *Hicks*, the Court of Appeal observed:

> 128 The cases recognise that delay may be relevant to sentence in two principal ways. First, where there has been a relatively lengthy process of rehabilitation, insofar as circumstances permit, that process should not be jeopardised. Secondly, fairness dictates that the fact that an offender has been kept in suspense as to his or her fate should be taken into account in mitigation. …When considering whether a delay requires an element of fairness to be taken into account as a mitigating factor, the court must have regard to the degree to which the accused had control over the length of that delay. In that regard, delay which is caused by the ordinary prosecutorial process or the administration of the courts will carry more weight as a factor in mitigation than any delay attributable to the actions of the accused[27]

129 I hasten to add that there can be no criticism of your exercise of your right to challenge your plea. The simple point is that a part of the delay in the finalisation of your case is attributable to your conduct.

130 I accept that you have not re-offended in the time you have been on bail for the present offending, and that is to your credit.

131 You must also be afforded a moderate reduction in sentence for the pandemic-related delay afflicting your matter, evident from the procedural history summarised earlier in these reasons.[28]

132 **Sentencing Principles**

133 Section 5 of the *Sentencing Act 1991* (Vic) provides that the only purposes for which you may be sentenced are:

(a) To punish you in a manner and to an extent which is just in all the circumstances;

[27] *Hicks* (n 22), [23] (emphasis added, citations omitted); see also *Weatherburn v The King* [2023] VSCA 283, [42]-[45].
[28] *Worboyes v The Queen* [2021] VSCA 169.

(b) To deter you or others from committing similar offences in the future;

(c) To facilitate rehabilitation;

(d) To manifest the denunciation of your conduct;

(e) To protect the community; or

(f) A combination of two or more of these purposes.

134 In your case, just punishment, general and specific deterrence, denunciation, and community protection assume significant weight.

135 As the authorities make clear, general deterrence is a principle sentencing factor in cases of "white collar thefts".[29] Whilst yours is a somewhat unusual example of such offending, you were able to offend in large part because you held yourself out to be a business man with extensive connections with legal and financial institutions and actors.

136 In light of your long history of offending involving dishonesty and the failure of the sentences you have previously received to deter you from this offending, specific deterrence and community protection are important purposes of the sentences I impose today.

137

138 **Consideration**

139 I do not completely accept that the evidence before the court supports your counsel's submissions about *Verdins*. While I accept that you suffer presently from the conditions diagnosed by Mr Cummins, I note that you have no history of treatment for any of those conditions. There is no evidence before the court which demonstrates convincingly that one or more of the conditions had a causal effect in relation to your offending. It is not suggested that your mental capacity

[29] *Bulfin* (n 4), 115, 132, 141.

was compromised in some way so that you did not fully appreciate the wrongfulness of your conduct. On the contrary, I consider you were fully aware of what you were doing.

140 Mr Cummins provides no explanation for his opinion about the nexus between your mental health conditions and your offending behaviour. I accept that there is a link in the sense that you needed the money to feed your gambling and alcohol habits. But this is insufficient to reduce your moral culpability for your offending in the sense described in *Verdins*.

141 I do accept that your mental health conditions may well impact on your experience of the prison environment to a greater extent than a person without those conditions. I have moderated the sentence I impose somewhat in recognition of this.

142 Taking into account the objective gravity of your offending, your moral culpability, your extensive criminal history and the impact of your offending on your victims, I accept the prosecution submission that a head sentence and a non-parole period is the only appropriate disposition. Put simply, despite your pleas of guilty and other matters in mitigation such as delay and your mental health, your offending is too serious to be adequately addressed by a community correction order even in combination with a term of imprisonment.

143

144 **Orders**

145 On charge 1, a rolled-up charge of obtaining financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958* (Vic), you are convicted and sentenced to a term of imprisonment of 2 years.

146 On charge 2, a rolled-up charge of obtaining financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958* (Vic), you are convicted and sentenced to a term of imprisonment of 2 years and 6 months.

147 On charge 3, a charge of obtaining property by deception contrary to s 82(1) of the *Crimes Act 1958* (Vic), you are convicted and sentenced to a term of imprisonment of 2 years.

148 On charge 4, a rolled-up charge of obtaining property by deception contrary to s 82(1) of the *Crimes Act 1958* (Vic), you are convicted and sentenced to a term of imprisonment of 2 years and 3 months.

149 The sentence imposed on charge 2 is the base sentence.

150 Six months of the sentence on charge 4 is to be served cumulatively on the base sentence and on the sentences imposed in respect of charges 1 and 3.

151 Five months of the sentence on charge 3 is to be served cumulatively on the base sentence and on the sentences imposed in respect of charges 1 and 4.

152 Five months of the sentence on charge 1 is to be served cumulatively on the base sentence and on the sentences imposed in respect of charges 3 and 4.

153 The total effective sentence is therefore 3 years and 10 months' imprisonment.

154 I order that you must serve 2 years and 3 months' imprisonment before you are eligible for parole.

155 Pursuant to s 6AAA of the *Sentencing Act 1991* (Vic), I declare that had you pleaded not guilty, I would have sentenced you to a total effective sentence of 4 years and 10 months' imprisonment with a non-parole period of 3 years and 2 months.

156 Pursuant to s 18 of the *Sentencing Act 1991* (Vic), I declare that the 14 days you have spent in custody since being remanded is a period of imprisonment already

served under the sentence imposed today and this declaration is to be noted in the court's records.

157 Pursuant to s 86 of the *Sentencing Act 1991* (Vic), being satisfied that as a result of the offence of obtaining a financial advantage by deception being charge 2 on the indictment No K13260632.1, Mandy Jacobs has experienced monetary loss, I order by consent that Rick McLeod pay to Mandy Jacobs compensation in the sum of $78,000.

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(a)